

REMARKS

Claims 1-21 are pending in the application.

Claims 1-21 have been rejected.

Claims 1, 17, 20 and 21 have been amended. These claim amendments above are intended to further clarify the claim language, and are not necessarily intended to limit the scope of the claims, unless the amended claim language is expressly quoted in the following arguments to distinguish over prior art.

Rejection of Claims under 35 U.S.C. §103

Claims 1-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,896,530 issued to White (“White”) in view of U. S. Patent 6,259,448 issued to McNally *et al.* (“McNally”). Applicants respectfully traverse this rejection.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

As an initial matter, Applicants incorporate discussion related to White’s non-disclosure of the claimed subnets as was presented in Applicants’ responses to previous Office Actions (response to Non-Final Office Action, dated March 30, 2005 and

Response to Final Office Action, dated August 30, 2005) and the Preliminary Amendment accompanying the Request for Continued Examination (dated October 28, 2005), which are incorporated herein by reference. For those reasons previously expressed, Applicants respectfully submit that White does not disclose the claimed subnet.

The Office Action admits that White does not disclose the following limitations of Claim 1:

- Deallocating one or more of the first subnet, the first computing device, and the first storage device;
- Allocating a second subnet;
- Allocating a second computing device coupled to the second subnet;
- Allocating a second storage device coupled to the second computing device; and,
- Storing a second set of instructions on the second storage device.

See Office Action, p.5. Applicants are in agreement that White does not disclose these claim limitations. The Office Action then references McNally for the proposition that McNally can be combined with White to provide these missing claim limitations.

The Office Action suggests that McNally discloses “deallocating one or more of the first subnet, the first computing device, and the first storage device.” The Office Action cites to the following passage within McNally for this proposition:

The configuration and method begins at step 60 by having an administrator open up a resource modeling desktop (e.g., a deployment task window on the GUI). At step 62, the administrator selects a resource model to be deployed or implements a new model (for example, through

the build process illustrated below). Typically, step 62 requires the administrator to open up a dialog box and select an existing resource model. At step 63, a test is performed to determine whether the target hosts are represented by an existing domain. As used herein, a “domain” represents a set of target nodes for deployment). If the outcome of the test at step 63 is negative, the routine branches to step 64 to create a new domain and assign the target host to that domain. The routine then continues at step 65, which step is also reached by a positive outcome to the test at step 63. At step 65, the routine continued with the user applying a GUI drag-and-drop to associate the model with the domain.

McNally 8:63-9:10 (emphasis added). Although the Office Action cites to this passage as disclosing the “deallocating” limitation of the independent claims, Applicants respectfully submit that there is no mention in this passage of deallocating any of the claimed elements (a subnet, a computing device or a storage device). Applicants submit that this paragraph merely relates to selecting nodes to which to send a disclosed resource model. Further, the Office Action suggests that McNally’s term “configuration” encompasses a disclosure of deallocating one or more subnets. *See* Office Action, p.5. Applicants respectfully submit that there is no indication or statement within the context of McNally’s disclosure that the term “configuration” is intended to mean “deallocating one or more subnets” as suggested by the Office Action. For at least these reasons, Applicants respectfully submit that McNally fails to disclose the “deallocating” limitation of the independent claims.

The Office Action further suggests that elements 72a-72c of McNally Figure 7 provide disclosure of “allocating a second subnet,” along with associated text found at McNally 10:55-11:26. Applicants respectfully submit that neither the figure nor the cited section of text provides such disclosure. In describing the elements of Figure 7, McNally states that “each distribution icon 72 represents a set of given machines in the distributed computer network, e.g., machines located in one geographic area of the distributed

enterprise environment.” McNally 9:44-47. McNally further states that these distribution icons are populated in the following manner.

During the building and/or deployment process, the administrator may initiate a discover operation to populate the GUI with the display elements. In this manner, the administrator may locate appropriate primitive resource models to be joined in the composite resource model, or to locate appropriate destination nodes for the resource model to be deployed.

McNally 9:26-32. Thus, the distribution icons 72 are not allocated subnets, but merely graphical representations of destination nodes found through a discovery process.

Further, Applicants respectfully submit that the cited section of McNally (McNally 10:55-11:26) provides no disclosure of allocating a second subnet. Rather, the cited section provides a software list of links in a node database. *See* McNally 11:10-12. As disclosed by McNally, the node database is associated with the managing server and includes data describing resource states (McNally 8:1-4) along with links resources, instances of models and nodes to allow “operators to find models of interest in order to observe the state of resources and to issue control requests” (McNally 8:34-37). Thus, Applicants submit that the distribution icons 72a-72c are representative of a set of network elements, but are not allocated subnets as that term is commonly understood and as that term is used in the present patent application. Therefore, for at least these reasons, Applicants respectfully submit that McNally fails to provide disclosure of “allocating a second subnet” as claimed in the independent claims of the present application.

Applicants have provided amendments to the independent claims to further emphasize that the claimed dynamic computing environment is reconfigurable from a first phase to a second phase, upon de-allocation of elements configured for the first

phase. Neither White nor McNally, alone or in combination, shows a reconfigurable system in the manner of the claimed dynamic computing environment.

The Office Action does not establish the presence of these limitations in White or McNally, alone or in combination. The burden is on the Examiner to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j). For the reasons presented above, neither White nor McNally, alone or in combination, teach these limitations of the independent claims (Claims 1, 17, 20 and 21) either as suggested by the Office Action or otherwise.

In addition, Applicants also respectfully submit that the Examiner has not satisfied the burden of factually supporting the alleged motivation to combine the two references. The Examiner's duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. The Examiner must therefore provide evidence to suggest the combination and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'". *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Further, the Office Action does not establish that such a combination of the teachings of these references would meet with success, as required.

The Office Action suggests that "[t]he motivation would have been obvious because one of ordinary skill in the art would have wanted a convenient way of dynamically creating, allocating, using and deleting multiple subnets and their components, to fully exploit the advantages of a distributed computing environment." *See* Office Action, pp. 7-8 (citing McNally 1:42-62). Applicants respectfully note that

there is no mention of subnets in the section of McNally that is cited as support for motivation to combine. In addition, Applicants further submit that there is no mention of dynamic creating of subnets and no mention of allocating or deallocating subnets within either White or McNally, as discussed above. White merely discusses managing resource models that can be associated with distributed systems. Thus, the advantages presented in the Office Action are not supported by the disclosure of McNally itself. Further, as is admitted by the Office Action, White does not provide disclosure of the elements presented in the Office Action either.

Applicants further respectfully submit that there is no evidence that the two references could be combined or a reason to attempt such combination. The stated object of White is to provide a system and method of computer software architecture for enabling a plurality of computer and associated resources to cooperatively process applications built from a single application source base. *See* White 3:39-45. White further discloses a transaction-based environment wherein “cooperative processing” provides for data exchange between transactions residing on heterogeneous platforms which is transparent to an application accessing such transactions. *See* White 14:44-46. White further purports to disclose a mechanism for cooperative processing involving a distributed resource control mechanism that permits communication between transactions and identification of resources on various systems running transactions. *See* White, Col. 33-35. There is no indication within White that the mechanism for distributing resource models to node in a network as described by McNally would have any applicability to the transaction-based environment of White. System resources within White are locally defined and accessed, while McNally purports to disclose global definition of system

resources within a network and subsequent management of those system resources. McNally is concerned with the management of network resources and not how a transaction-based application can access distributed resources in a network, as with White. Thus, neither White nor McNally suggests the combination presented by the Office Action.

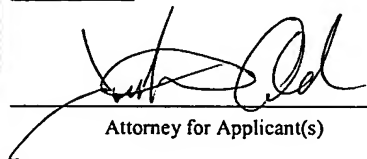
Applicants also respectfully submit that the combination of White and McNally would not provide the invention claimed by the present application. As pointed out above, neither White nor McNally, alone or in combination, disclose all of the limitations of the independent claims in the present application. Without such disclosure, the references cannot be combined to result in the claimed invention. Applicants further respectfully submit that whatever benefits that may be realized from the combination of White with McNally, if any, would not be those of the claimed invention. Without providing the limitations related to configuring a dynamic computing environment, deallocating subnets and devices within the dynamic computing environment and then reconfiguring the dynamic configuring environment, White and McNally do not provide the flexibility of the methods and apparatuses of the claimed invention.

Applicants respectfully submit that the arguments presented in the Office Action fail to establish a *prima facie* case of obviousness. The Office Action makes no showing of a motivation to combine White with McNally from within the references themselves; therefore, it must be presumed that there is none. The Office Action presents nothing more than broad, generalized statements relating to the motivation of a person of ordinary skill, which Applicants respectfully submit is insufficient to support a finding of obviousness. For these reasons, Applicants respectfully submit that the Office Action

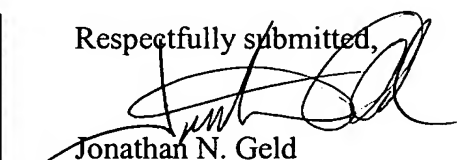
fails to present a *prima facie* case of obviousness of independent Claims 1, 17, 20, and 21, and all claims dependent upon them, and that therefore these claims are in condition for allowance. Applicants therefore respectfully requests the Examiner's reconsideration and withdrawal of the rejections to those claims.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA 22313-1450, on <u>April 18, 2006</u> .	
	<u>4/18/06</u>
Attorney for Applicant(s)	Date of Signature

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